



FEDERAL ELECTION COMMISSION
Washington, DC 20463

DISSENTING OPINION IN ADVISORY OPINION 1996-5

of

CHAIRMAN LEE ANN ELLIOTT

I dissent to the majority opinion issued in this matter because it allows the Jay Kim for Congress Committee to remedy the receipt of an illegal contribution by disgorging a like amount through a transfer to the U.S. Treasury. The Commission's regulations at 11 CFR 103.3(b)(2) clearly require illegal contributions to be refunded to the contributor. I objected for the record to the Office of the General Counsel's Report circulated in MUR 3460, which recommended disgorgement of illegal contributions to the U.S. Treasury as an option to refunding the contributor. Prescribing the remedy of disgorgement of illegal contributions to the U.S. Treasury is beyond our authority in the context of an enforcement action, and I believe that to be the case in an Advisory Opinion as well. I would follow the precedent established in Advisory Opinions 1989-5 and 1984-52. The contribution in this matter should be refunded to the actual prohibited contributor, Samsung America, Inc. I understand the argument for disgorgement to be one of equity such that a violator of the law should not be enriched due to a refund of contributions prohibited in the first place. Nevertheless, the manner for establishing such a policy in direct contradiction to our previously published regulations is through regulatory reform, not on a case specific situation as it arises in an advisory opinion request.

3/18/96